In the High Court of Judicature at Madras

Dated:30.08.2006

Coram:

The Hon'ble Mr. Justice P. SATHASIVAM

Civil Miscellaneous Appeal No.2492 of 2006

And C.M.P.No.9405 of 2006

United India Insurance Company
Ltd., Trichur Branch Office
CIMIS Complex
Karuppam Road, Trichur 680 001. .. Appellant

vs.

1. K. Maheswari
2. Minor Sathya
3. Minor Mithun
   (minors are rep. by R.1 as
   natural guardian and mother)

4. Backiathammal
5. K.L. Jose .. Respondents

Civil Miscellaneous Appeal is filed under Section 30 of the Workmen's Compensation Act, 1923 against the order dated 30.12.2004 made in W.C.No.37 of 2004 on the file of Commissioner for Workmen's Compensation/Deputy Commissioner of Labour, Coimbatore.

For appellant : Mr. K. Suryanarayanan

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JUDGEMENT

United India Insurance Company Ltd., is the appellant. In respect of the death of one Kannan on 09.10.2003 in the course of his employment, respondents 1 to 4 herein / applicants, prayed for a compensation of a sum of Rs.5 lakhs before the Commissioner for Workmen's Compensation, Coimbatore. The said authority, on consideration of entire materials, passed an award for Rs.2,76,094/-. Questioning the same, United India Insurance Company has filed the present appeal.

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2. The learned counsel appearing for the Insurance Company contended that the Commissioner had erroneously found that the deceased died due to heart-attack in the course of his employment on the basis of the evidence of one Rajkumar, alleged to be the cleaner of the lorry.

3. It is the case of the applicants as spoken to by PW.1, wife of the deceased that her husband Kannan was employed as Lorry Driver, under one K.L. Jose and on 09.10.2003, after loading vegetables, when he was driving his lorry from Mettupalayam, while crossing a speed breaker near Trichur Tollgate i.e., at Pichanur, he suffered heart-attack and died instantaneously.

4. Apart from the evidence of PW.1, one Rajkumar, who worked as Cleaner under the very same employer, viz., K.L. Jose, reiterated the stand taken by PW.1 regarding the cause of death. According to him, after loading vegetables in the lorry, when the deceased Kannan was proceeding near Pichanur, he expressed some discomfort and suddenly collapsed and died on the spot. He also stated that this happened at 10.00 p.m. and immediately he informed the same to their employer K.L.Jose. He further stated that the employer Jose brought an ambulance and the deceased Kannan was taken to his home and since the employer assured the family members of the deceased that he would take care of their interest, no complaint was made to the police immediately.

5. It is further seen that a complaint was made to the District Collector, who in turn asked the Inspector of Police, Madhukarai, to register a case, followed by the investigation. Apart from the evidence of Pws.1 and 2, one R. Velliangiri, Village Administrative Officer , Pichanur was examined as PW.4. He deposed that on the basis of the request made by the wife of the deceased, he submitted a report to the Tahsildar and the same has been marked as Ex.P.12. Death report is Ex.P.13.

6. Admittedly, as against the oral and documentary evidence adduced on the side of the applicants, the owner and the insurer failed to place any acceptable material to substantiate their defence. Accordingly, we concur with the conclusion of the Commissioner that the deceased Kannan died in the course of his employment and the applicants are entitled to compensation under the Workmen's Compensation Act.

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7. Coming to the quantum, no serious argument was advanced. The evidence of PW.1 shows that the deceased was getting an income of Rs.5,500/- per month inclusive of batta. However, in the absence of documentary evidence for the same, the Commissioner treating the deceased as cooli, by applying G.O.No.102 (2D) dated 22.09.1999, fixed his basic wages at Rs.1,781/- plus D.A. at Rs.1,448.40 and altogether fixed his monthly income at Rs.3,229.40. PW.1 has also stated that at the time of accident her husband was aged about 45 years. The driving licence of the deceased, which has been marked as Ex.P.3 mentions his date of birth as 19.04.1959. Accordingly, the Commissioner has rightly fixed his age as 45 at the time of accident. Taking note of the monthly wages, age and by applying relevant factor from the Workmen's Compensation Act, the Commissioner, fixed the compensation at Rs.2,73,594/-. After adding Rs.2,500/- towards funeral expenses, the Commissioner has granted a sum of Rs.2,76,094/- as compensation. The materials placed both in the form of oral and documentary evidence show that the amount fixed by the Commissioner is reasonable and acceptable.

8. It is not in dispute that the lorry in question was insured with the appellant Insurance Company and Ex.R.1 is the Insurance Policy. On the date of accident there was a valid insurance policy for the lorry in question. All these aspects have been correctly appreciated by the Commissioner and the amount of compensation determined is also just and reasonable. There is no error or infirmity or substantial question of law for entertaining the above appeal. Accordingly, the appeal fails and the same is dismissed. No costs. Consequently, connected MP., is dismissed.

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Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

1. The Deputy Commissioner
of Labour/Commissioner
for Workmen's Compensation
Coimbatore.

2. The United India Insurance Company ltd
Trichur Branch Office
CIMIS Complex
Karuppam Road, Trichur 680 001.

PV(CO)
NM(15.09.2006)

C.M.A.No.2492/06

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